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INTER-AMERICAN JUSTICE: NOW AVAILABLE IN A U.S. FEDERAL COURT NEAR YOU

Francisco Rivera*

“If human rights abuses and abusers are transnational, so, too must be the ability of victims to access mechanisms that punish those abuses.”¹

I. INTRODUCTION

The protection of human rights in the Americas is first and foremost a responsibility of every state. But what happens if a state fails to adequately protect the human rights of its own citizens? What if the local police brutally tortures and causes the disappearance of a citizen? What if guerrillas or paramilitaries massacre an entire indigenous village with the support and encouragement of the state's military forces? What if a state helps protect the business interests of a multinational corporation by killing local union leaders and ignoring local and international environmental standards? What if corrupt judges and weak judicial systems promote impunity for such violations? Where can these and other human rights victims seek justice against their own State? In addition to the United Nations, citizens of the Americas² have two very important resources at their disposal where they can seek international justice: 1) the inter-American system of protection and promotion of human rights of the Organization of American States (“OAS”),³ and 2) the federal

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1. EarthRights International, *In Our Court: ATCA, Sosa and the Triumph of Human Rights* 20 (July 2004), available at <http://www.earthrights.org/pubs/inourcourt.pdf> (last visited Aug. 5, 2005).

2. The phrase “citizens of the Americas” refers to citizens of the American continents and the Caribbean.

3. See Organization of American States, *About the OAS: The OAS and the*

courts of the United States of America.⁴

The inter-American system of protection and promotion of human rights, which is composed of the Inter-American Commission on Human Rights ("Commission") and the Inter-American Court of Human Rights ("Court"),⁵ has been the traditional forum where victims of human rights violations in the Americas can seek justice against their own states. Recently,⁶ the U.S. Supreme Court authorized the use of a federal statute, known as the Alien Tort Claims Act ("ATCA"),⁷ which allows foreign plaintiffs to file civil lawsuits in U.S. federal courts "for a tort only, committed in violation of the law of nations or a treaty of the United States."⁸ The U.S. Supreme Court has thus confirmed that the door of U.S. federal courts is open for citizens of the Americas, or from any other region of the world, who seek international justice against, *inter alia*, their own government officials.⁹ Many foreigners from Latin America have already sought inter-American justice in U.S. federal courts by using the ATCA.¹⁰

Inter-American System, at <http://www.oas.org/documents/eng/oasinbrief.asp> (last visited Apr. 18, 2005) [hereinafter *About the OAS*]. See also Statute of the Inter-American Commission on Human Rights, § I, art. 1 (1979), available at <http://www.cidh.org/Basicos/basic15.htm> (last visited Aug. 5, 2005) ("The Inter-American Commission on Human Rights is an organ of the Organization of the American States, created to promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter."). See also Statute of the Inter-American Court of Human Rights, chapter I, art. 1 (1979), available at http://www.corteidh.or.cr/general_ing/statute.html (last visited Aug. 18, 2005) ("The Inter-American Court of Human Rights is an autonomous judicial institution whose purpose is the application and interpretation of the American Convention on Human Rights. The Court exercises its functions in accordance with the provisions of the aforementioned Convention and the [Court's] Statute.").

4. See Alien Tort Claims Act ("ATCA"), 28 U.S.C. § 1350 (2000); *Sosa v. Alvarez-Machain*, 124 S. Ct. 2739 (2004).

5. See *About the OAS*, *supra* note 3.

6. *Sosa*, 124 S. Ct. at 2739.

7. 28 U.S.C. § 1350.

8. *Id.* See *Filártiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980) (using the Alien Tort Claims Act ("ATCA") for the first time for international human rights torts). The Supreme Court recently upheld the use of the ATCA in *Sosa*. See *Filártiga*, 630 F.2d at 876, 890; *Sosa*, 124 S. Ct. at 2765.

9. BETH STEPHENS & MICHAEL RATNER, *INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS* (Transnational Publishers, Inc. 1996).

10. See, e.g., *Arce v. Garcia*, 400 F.3d 1340 (11th Cir. 2005) (El Salvador); *Cabello v. Fernández-Larios*, No. 04-10030, 2005 WL 580533 (11th Cir. Mar. 14, 2005) (Chile); *Doe v. Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004) (El Salvador); *Sosa*, 124 S. Ct. at 2739 (Mexico).

Many more have sought inter-American justice in the inter-American system of protection and promotion of human rights.¹¹ Some have even sought inter-American justice in both forums.¹² This article addresses the availability of these two forums and also encourages their use by victims of human rights violations in the Americas.

II. THE AVAILABILITY OF THE INTER-AMERICAN SYSTEM OF PROTECTION AND PROMOTION OF HUMAN RIGHTS

A. *Inter-American Commission on Human Rights*

The inter-American system of protection of human rights plays a vital role in the protection and promotion of human rights throughout the region. The inter-American system consists of human rights norms, which are comprised of the Charter of the Organization of American States,¹³ the American Declaration of the Rights and Duties of Man,¹⁴ and the

11. See Inter-American Commission on Human Rights, *Annual Report 2004—Chapter III*, at <http://www.cidh.org/annualrep/2004eng/chap.3.htm> (last visited Aug. 18, 2005); Inter-American Court of Human Rights, *Annual Report 2004*, at http://www.corteidh.or.cr/public_ing/reports.html (last visited Aug. 18, 2005).

12. In 1981, Zenaida Velázquez presented a petition on behalf of her deceased brother to the Inter-American Commission on Human Rights against the state of Honduras. Resolution No. 22/86, Case 7920 (April 18, 1986), available at <http://www.cidh.org/annualrep/85.86eng/Honduras7920.htm>. The Inter-American Commission submitted the case to the Inter-American Court on Human Rights, which issued a judgment against the state of Honduras on July 29, 1988. Velásquez-Rodríguez Case, *Judgment*, Inter-Am. C.H.R., OEA/ser.C/4, ¶¶ 39-49 (July 29, 1988) [hereinafter Velásquez-Rodríguez Case, *Judgment* (July 29, 1988)], available at http://www.corteidh.or.cr/seriecpdf_ing/seriecpdf_ing_04_ing.pdf (last visited Aug. 18, 2005). On July 12, 2002, Zenaida Velázquez filed a civil complaint in the U.S. District Court of the Southern District of Florida. Velázquez v. Grijalba, *Complaint* (July 12, 2002), available at http://www.cja.org/cases/Grijalba_Docs/Grijalba_Complaint.html (last visited Aug. 5, 2005). On September 23, 1993, the next of kin of Archbishop Oscar Romero presented a petition to the Inter-American Commission on Human Rights against the state of El Salvador. Case 11.481 (Monsignor Oscar Arnulfo Romero y Galdamez), Inter-Am. C.H.R., Report N° 37/00 (Apr. 13, 2000) (El Salvador), available at <http://www.cidh.org/annualrep/99eng/Merits/ElSalvador11.481.htm> (last visited Aug. 18, 2005). The case was subsequently heard in U.S. district court in Doe v. Saravia, 348 F. Supp. 2d 1112 (E.D. Cal. 2004).

13. Charter of the Organization of American States, OEA/ser.G/CP/INF.3964/96 (May 16, 1996), available at <http://www.cidh.oas.org/Basicos/charter.htm> [hereinafter Charter of the Organization of American States].

14. American Declaration of the Rights and Duties of Man (1948), available at <http://www.cidh.org/Basicos/basic2.htm> (last visited Aug. 16, 2005).

American Convention on Human Rights ("American Convention").¹⁵ The inter-American system also consists of corresponding supervisory organs, which include the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. The system also has political organs, which consist of the Permanent Council and the General Assembly of the Organization of American States.¹⁶

Although the starting point for any victim of a human rights violation should be the domestic legal system of the state in question, there are nevertheless numerous circumstances where justice simply cannot be obtained in the domestic courts. In such cases, victims in the Americas can seek international justice. This is possible in part because the states that have signed or ratified the American Convention have recognized that

the essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American states.¹⁷

According to Article 33 of the American Convention, the organs that have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to the American Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.¹⁸ Individuals, who believe there is a breach of the American Convention and wish to file a petition before the Inter-American system of protection of human rights, must address it to the Commission. In accordance with Article 44 of the American Convention, the Commission is compe-

15. American Convention on Human Rights (1969), available at <http://www.cidh.oas.org/Basicos/basic3.htm> (last visited Aug. 18, 2005) [hereinafter *American Convention on Human Rights*].

16. See Organization of American States, *General Assembly*, at <http://www.oas.org/consejo/GENERAL%20ASSEMBLY/default.asp> (last visited Apr. 22, 2005); Organization of American States, *Permanent Council*, at <http://www.oas.org/main/main.asp?sLang=E&sLink=http://www.oas.org/consejo> (last visited Apr. 22, 2005).

17. American Convention on Human Rights, Preamble (1969), available at <http://www.cidh.oas.org/Basicos/basic3.htm> (last visited Sept. 10, 2005).

18. See *id.* art. 33.

tent to hear petitions lodged by "[a]ny person or group of persons, or any nongovernmental entity legally recognized."¹⁹

The Commission's ability to examine complaints or petitions regarding individual cases of human rights violations is known as the "petition system."²⁰ This system provides an alternative remedy for victims of human rights violations whose claims were never properly addressed within the domestic legal system.²¹ Through the petition system, the Commission receives information from any person, group of persons, or non-governmental organization ("NGO") concerning an alleged human rights violation by one of the OAS member states; then it proceeds to analyze and investigate the facts and legal arguments contained in the petition.²² The alleged violation may consist of an affirmative violation by state agents, a state's failure to prevent a violation, or a failure to properly investigate, punish those responsible, and compensate the victim.²³ The Commission analyzes alleged violations of the American Convention by member states that have ratified it.²⁴ Absent such ratification, the Commission can still apply the norms set out in the American Declaration.²⁵

The Commission may hear a petition only if certain procedural standards are met. First, petitioners must have exhausted domestic remedies or must show that these remedies did not comply with due process standards, were unreasonably delayed, or were denied.²⁶ Second, the petition must be timely (usually filed within six months of the final decision in

19. See *id.* art. 44.

20. It should be noted that the petition system is only one method by which the Inter-American Commission promotes and protects human rights in the Americas. The Commission also uses other methods, such as country reports, special reports, annual reports, special rapporteurs, promotional and educational activities, *in loco* visits, precautionary measures, and requests for advisory opinions from the Inter-American Court. See Inter-American Commission on Human Rights at www.cidh.oas.org (last visited Mar. 26, 2005).

21. See American Convention on Human Rights, *supra* note 15, art. 46.

22. See *id.* arts. 44-51.

23. See *generally id.*

24. See *id.* arts. 44-45.

25. See *generally id.* art. 41. The Commission is the only OAS supervisory organ that can exercise jurisdiction over states, such as the United States, that are not party to the Convention. Unless a state ratifies the Convention and consents to the Court's contentious jurisdiction, the Court cannot exercise its jurisdiction over that state. See *id.* art. 62.3.

26. See *id.* art. 46.

the domestic system).²⁷ If these requirements are satisfied, the Commission can request more information from the state in question regarding the alleged violation.²⁸ Alternatively, the Commission may do an *in loco* visit to gather the necessary information.²⁹ Sometimes, the parties to the dispute may reach a friendly settlement.³⁰ If no friendly settlement can be achieved, the Commission then prepares a report "setting forth the facts and stating its conclusions."³¹ If the matter has not been settled following the Commission's report, and if the case has not been submitted to the Court, the Commission may issue a report, expressing its opinion and recommendations, which the Commission may make public.³² These reports on the merits of individual cases provide some degree of reparation to victims who could not seek justice within their domestic systems. In cases of states parties to the American Convention that have accepted the contentious jurisdiction of the Inter-American Court, the Commission can also submit the case to the Inter-American Court if, for example, a state has failed to comply with the Commission's recommendations on a given petition.³³

B. *Inter-American Court of Human Rights*

The Inter-American Court of Human Rights has adjudicatory (contentious) jurisdiction over disputes involving

27. American Convention on Human Rights, *supra* note 15.

28. *See id.* art. 48.

29. *See* Rules of Procedure of the Inter-American Commission on Human Rights, art. 40, available at <http://www.cidh.oas.org/Basicos/basic16.htm> (last visited Aug. 18, 2005).

30. *See* American Convention on Human Rights, *supra* note 15, arts. 48 and 49. Friendly settlements have grown in usefulness and importance in the petition system. Less than ten years ago, there was only one friendly settlement. Friendly settlements are being increasingly sought in recent years. *See* Inter-American Commission on Human Rights, Organization of American States, *Statement by Dean Claudio Grossman, President of the Inter-American Commission on Human Rights, at the Opening Meeting of the 113th Regular Session of the IACHR* (Oct. 10, 2001), available at <http://www.cidh.oas.org/Discursos/10.10.01eng.htm> (last visited Sept. 10, 2005). Dean Claudio Grossman is the former President of the Inter-American Commission on Human Rights.

31. *See* American Convention on Human Rights, *supra* note 15, art. 50.

32. *See id.* art. 51.

33. *See id.* art. 61. There is now a presumption in favor of sending cases before the Court. *See* Rules of Procedure of the Inter-American Commission on Human Rights, art. 44 (2003), available at <http://www.cidh.oas.org/Basicos/basic16.htm> (last visited Sept. 10, 2005).

charges that a state party has violated the human rights guaranteed by the American Convention.³⁴ It also has advisory jurisdiction to interpret the American Convention and other human rights instruments at the request of OAS member states or various OAS organs.³⁵ Unlike the Inter-American Commission, which can accept petitions submitted to it by any person or group of persons, the Inter-American Court can only review cases submitted to it by the Inter-American Commission and by states that are parties to the Convention.³⁶ Importantly, the Court can only exercise jurisdiction over states that have both ratified the American Convention on Human Rights and have accepted the Court's jurisdiction.³⁷

Once a case reaches the Court, and if the Court finds that there has been a violation of a right or freedom protected by the American Convention,

the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.³⁸

The Court's decisions are unappealable, and states are bound to comply with them.³⁹

Thus, through the inter-American system of protection and promotion of human rights, victims of human rights violations throughout the Americas can seek justice against their own states when justice is not available domestically. Alternatively, if certain requirements are met, U.S. federal courts may also be available to those victims who strive to hold the individual perpetrators accountable and are unable

34. See American Convention on Human Rights, *supra* note 15, arts. 33, 62.

35. See *id.* art. 64.

36. See *id.* arts. 44, 61.1.

37. The following OAS Member States have accepted the Inter-American Court's jurisdiction: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago (denounced the Convention on May 26, 1998), Uruguay, and Venezuela. See Signatures and Current Status of Ratifications, American Convention on Human Rights, available at <http://www.cidh.org/Basicos/basic4.htm> (last visited Aug. 22, 2005).

38. American Convention on Human Rights, *supra* note 15, art. 63.1.

39. See *id.* art. 68.

to do so in their own countries.

III. THE AVAILABILITY OF U.S. FEDERAL COURTS AND THE ALIEN TORT CLAIMS ACT

American victims of human rights violations are not limited to seeking international justice only through the inter-American system. They can also seek international justice in a non-international court in their own backyard. U.S. federal courts are now open to foreign human rights victims who can link their torturers or other human rights violators to a U.S. jurisdiction.⁴⁰ The law that permits these cases to be heard in U.S. federal courts is known as the ATCA.⁴¹ It was first used in a human rights case twenty-five years ago by Latin American plaintiffs.⁴² Since then, victims of human rights violations from all over the Americas have used the ATCA to seek international justice against their perpetrators.

The ATCA was enacted in 1789 but remained largely unused for nearly two centuries until the landmark decision in *Filártiga v. Pena-Irala*.⁴³ In 1976, Joelito Filártiga, a seventeen-year-old Paraguayan, was tortured to death in Paraguay by Americo Pena-Irala, then Inspector General of Police in Asuncion, Paraguay, in retaliation for his father's political activities.⁴⁴ In 1979, Joelito's father, Joel Filártiga, and his sister, Dolly Filártiga, were living in the eastern United States, and found out that Pena-Irala was living in Brooklyn.⁴⁵ Although the ATCA had never been used as the basis for a human rights case before, lawyers from the Center for Constitutional Rights suggested that Joelito's relatives sue Pena-Irala under the ATCA.⁴⁶ Mr. Filártiga and his daughter filed a complaint and alleged that they met all of the requirements under the ATCA: the plaintiffs were aliens, they were alleging a "tort," and the torture and murder of Filártiga were a

40. See 28 U.S.C. § 1350 (2000); *Sosa v. Alvarez-Machain*, 124 S. Ct. 2739 (2004).

41. 28 U.S.C. § 1350.

42. *Filártiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

43. *Id.* at 877-78.

44. *Id.* at 878.

45. *Id.* at 878-79.

46. Center for Constitutional Rights, *Alien Tort Claims Act: Synopsis*, available at http://www.ccrny.org/v2/legal/human_rights/rightsArticle.asp?ObjID=TzdItkzYag&Content=405 (last visited Apr. 8, 2005).

“violation of the law of nations.”⁴⁷

In 1984, Pena-Irala was found liable in the amount of ten million dollars.⁴⁸ Although Pena-Irala fled without paying, Joelito's sister Dolly Filártiga felt victorious, because for most, if not all, ATCA plaintiffs such cases are not about money but about justice.⁴⁹ Regarding her case, Ms. Filártiga has said that “With the help of American law I was able to fight back and win. Truth overcame terror. Respect for human rights triumphed over torture. What better purpose can be served by a system of justice?”⁵⁰

The Filártigas served as an example for other victims of human rights violations in the Americas, who learned that U.S. courts could provide justice for violations that occurred in the victims' own countries. Following *Filártiga*, more than twenty ATCA cases have been brought in U.S. federal courts seeking justice for human rights violations in at least thirteen countries in the Americas.⁵¹ They amount to roughly one-

47. 28 U.S.C. § 1350 (2000).

48. *Filartiga v. Pena-Irala* 577 F. Supp. 860, 865-67 (E.D.N.Y. 1984).

49. See No Safe Haven, *Statement of Dolly Filártiga—March 29th 2004*, at http://www.nosafehaven.org/state_filartiga.html (last visited Mar. 26, 2005) [hereinafter *Statement of Dolly Filártiga*].

50. *Id.*

51. Partial list of recent ATCA cases in U.S. courts involving human rights violations in the Americas:

Argentina: *Bauman v. Daimler-Chrysler, Corp.* (N.D. Cal. filed Jan. 13, 2003); *Forti v. Suarez-Mason*, 694 F. Supp. 707 (N.D. Cal. 1988).

Bolivia: *Eastman Kodak Co. v. Kavlin*, 978 F. Supp. 1078 (S.D. Fla. 1997).

Chile: *Estate of Cabello v. Fernández-Larios*, 157 F. Supp. 2d 1345 (S.D. Fla. 2001).

Colombia: *Estate of Rodriguez v. Drummond Co., Inc.*, 256 F. Supp. 2d 1250 (N.D. Ala. 2003); *Mujica v. Occidental Petroleum Corp.*, Case No. cv-03-2860-WJR-JWJx (C.D. Cal. filed Apr. 24, 2003); *Sinaltrainal v. The Coca-Cola Co.*, 256 F. Supp. 2d 1345 (S.D. Fla. 2003).

Ecuador: *Arias v. DynCorp*, Case No. 01-cv-01908-RWR (D.D.C. filed Sept. 11, 2001).

El Salvador: *Arce v. Garcia*, 400 F.3d 1340 (11th Cir. 2005); *Chavez v. Carranza* (W.D. Tenn. filed Dec. 11, 2003); *Doe v. Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004).

Guatemala: *Villena Aldana v. Fresh Del Monte Produce, Inc.*, 305 F. Supp. 2d 1285 (S.D. Fla. 2003); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995).

Haiti: *Jean v. Dorélien* (S.D. Fla. filed Jan. 24, 2003); *Paul v. Avril*, 901 F. Supp. 330 (S.D. Fla. 1994).

Honduras: *Reyes v. Grijalba* (S.D. Fla. filed July 12, 2002).

Mexico: *Sosa v. Alvarez-Machain*, 124 S. Ct. 2739 (2004).

Nicaragua: *Manzanarez-Tercero v. C&Y Sportswear, Inc. (Chentex)*, Case No. cv-00-12715-NM (Ctx) (C.D. Cal. filed Dec. 5, 2000, settled and dismissed May 25, 2001).

third of all ATCA cases filed in the past twenty-five years.⁵²

A. ATCA Requirements and Limits

Although U.S. courts provide great incentives for foreign plaintiffs,⁵³ there are multiple obstacles to bringing an ATCA lawsuit.⁵⁴ The first hurdle is to establish proper subject matter jurisdiction by alleging a violation of the "law of nations," i.e., a violation that is universally condemned and well-defined.⁵⁵ Not all violations of international law can be redressed through the ATCA.⁵⁶ Recently, the U.S. Supreme Court in *Sosa v. Alvarez* affirmed that the ATCA provides a remedy only for a narrow range of heinous human rights violations: those that have sufficiently "definite content and acceptance among civilized nations."⁵⁷ In fact, the list of actionable offenses under the ATCA is very limited.⁵⁸ Torts that have been deemed by U.S. courts to be in violation of the "law of nations" within the meaning of the ATCA include: summary execution,⁵⁹ torture,⁶⁰ causing disappearance,⁶¹ prolonged arbitrary detention,⁶² cruel, inhuman or degrading

Paraguay: *Filártiga*, 630 F.2d at 876.

Peru: *Aguinda v. Texaco, Inc.*, 303 F.3d 470 (2d Cir. 2002); *Flores v. S. Peru Copper Corp.*, 343 F.3d 140 (2d Cir. 2003).

52. See *supra* note 51.

53. See discussion *infra* Section III.B.

54. Francisco Rivera, *A Response to the Corporate Campaign against the Alien Tort Claims Act*, 14 IND. INT'L & COMP. L. REV. 251, 270-76 (2003).

55. *Id.* at 270. See, e.g., *Filártiga*, 630 F.2d at 880.

56. See Rivera, *supra* note 54, at 270.

57. *Sosa*, 124 S. Ct. at 2765.

58. See Rivera, *supra* note 54, at 270.

59. See, e.g., *Estate of Cabello*, 157 F. Supp. 2d at 1345; *Forti*, 672 F. Supp. at 1531 (N.D. Cal. 1987); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995), *cert. denied*, 518 U.S. 1005 (1996); *Trajano v. Marcos*, 978 F.2d 493 (9th Cir. 1992), *cert. denied*, 508 U.S. 972 (1993); *Xuncax*, 886 F. Supp. at 162.

60. See, e.g., *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996), *cert. denied*, 519 U.S. 830 (1996); *Filártiga*, 630 F.2d at 876; *Kadic*, 70 F.3d at 232; *Trajano*, 978 F.2d at 493; *Forti*, 672 F. Supp. at 1531; *Nat'l Coalition Gov't of Union of Burma v. Unocal, Inc.*, 176 F.R.D. 329 (C.D. Cal. 1997), *aff'd by*, *Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), *reh'g granted*, 395 F.3d 978 (9th Cir. 2003); *Tachiona v. Mugabe*, 216 F. Supp. 2d 262 (S.D.N.Y. 2002); *Xuncax*, 886 F. Supp. at 162.

61. See, e.g., *Forti v. Suarez-Mason*, 694 F. Supp. 707, 710 (N.D. Cal. 1988) (holding that the universally recognized tort of "disappearance" has "two essential elements: (a) abduction by a state official or by persons acting under state approval or authority; and (b) refusal by the state to acknowledge the abduction and detention"). See also *Xuncax*, 886 F. Supp. at 162.

62. See, e.g., *Forti*, 672 F. Supp. at 1531; *Eastman Kodak Co.*, 978 F. Supp.

treatment,⁶³ kidnapping,⁶⁴ slavery,⁶⁵ war crimes,⁶⁶ crimes against humanity,⁶⁷ forced labor,⁶⁸ rape,⁶⁹ denial of right of association,⁷⁰ and genocide.⁷¹

As I have already articulated in a previous article, although the number of actionable violations under the ATCA has increased since *Filártiga*,⁷² there are safeguards to prevent the ATCA from providing a cause of action for ordinary personal injury claims.⁷³ Two limiting principles set forth in *Filártiga*—that the violation must be universally condemned and readily definable⁷⁴—have allowed judges to dismiss claims that fail to meet this high standard.⁷⁵ For example, in *Flores v. Southern Peru Copper Corp.*,⁷⁶ a case involving environmental pollution in Peru, the court concluded that the “plaintiffs [had] not demonstrated that high levels of envi-

at 1078; *Xuncax*, 886 F. Supp. at 162.

63. See *Xuncax*, 886 F. Supp. at 162. See also *Hilao v. Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424 (D.N.J. 1999). See also *Forti*, 672 F. Supp. at 1543 (determining that cruel, inhuman, and degrading treatment was not definable and did not have universal consensus). Unless the harm rises to the level of torture or other universally recognized violation of the law of nations, cruel, inhuman, or degrading treatment may not by itself be treated as a violation of the law of nations. See *id.* There is little guidance as to what exactly constitutes cruel, inhuman or degrading treatment or punishment, so the violation is not easily definable. *Xuncax*, decided after the ratification of the Convention Against Torture, defined cruel, inhuman, or degrading treatment as an actionable violation under the ATCA, but only as defined by the constitutional standards applied in the Fifth, Eighth, and Fourteenth Amendment contexts, rather than as defined by international law. See *Xuncax*, 886 F. Supp. at 185-87.

64. See, e.g., *Jaffe v. Boyles*, 616 F. Supp. 1371 (W.D.N.Y. 1985). See also *Nguyen Da Yen v. Kissinger*, 528 F.2d 1194 (9th Cir. 1975) (stating that the illegal seizure, removal, and detention of an alien against his will in a foreign country may be in violation of the law of nations).

65. See, e.g., *Iwanowa*, 57 F. Supp. 2d at 424; *Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), *reh'g en banc granted*, 395 F.3d 978 (9th Cir. 2003) (recognizing forced labor as a modern form of slavery).

66. *Kadic*, 70 F.3d at 242-44.

67. See *Quinn v. Robinson*, 783 F.2d 776 (9th Cir. 1986).

68. *Doe I*, 395 F.3d at 932.

69. *Id.*

70. *Estate of Rodriguez*, 256 F. Supp. 2d at 1250.

71. *Kadic*, 70 F.3d at 241-42.

72. See Beth Stephens, *Translating Filártiga: A Comparative and International Analysis of Domestic Remedies for International Human Rights Violations*, 27 YALE J. INT'L L. 1, 2 (2002).

73. See *Rivera*, *supra* note 54, at 271.

74. *Filártiga*, 630 F.2d at 888.

75. See *Rivera*, *supra* note 54, at 271.

76. 253 F. Supp. 2d 510 (S.D.N.Y. 2002).

ronmental pollution within a nation's borders, causing harm to human life, health, and development, violate any well-established, universally recognized norms of international law" because there existed no "general consensus among nations" that environmental pollution that causes harm to human health is "universally unacceptable."⁷⁷ Although claims involving environmental harms may one day be actionable under the ATCA, courts will only permit this if the twin principles of *Filártiga* are met.⁷⁸

Another consideration for future ATCA plaintiffs is the identity of proper defendants. Although the inter-American system only allows cases to be brought against states,⁷⁹ this is not the case in U.S. federal courts under the ATCA. Building on Nuremberg precedent, U.S. courts have held, through a progression of ATCA decisions, from *Kadic v. Karadzic*⁸⁰ to *Sosa*, that private actors may be sued under the ATCA,⁸¹ as well as under its sister statute, the Torture Victim Protection Act ("TVPA"), depending upon the nature of the offense.⁸²

77. *Id.* at 525 (internal quotations omitted). See also Peter J. Nickles, Thomas L. Cubbage III & Elie Honig, *Court Properly Limits Scope of Alien Tort Claims Act*, 18 LEGAL BACKGROUNDER 2-4 (Jan. 17, 2003), available at <http://www.wlf.org/upload/011703Nickles.pdf> (last visited Aug. 5, 2005).

78. Rivera, *supra* note 54, at 271.

79. American Convention on Human Rights, State Obligations and Rights Protected, pt. I, ch. I, art. 1, available at <http://www.oas.org/juridico/english/Treaties/b-32.htm> (last visited Aug. 5, 2005).

80. 70 F.3d 232 (2d Cir. 1995), *cert. denied*, 518 U.S. 1005 (1996). In *Kadic*, the Second Circuit incorporated the concept of private party liability into the ATCA and held that private parties could be held liable under the ATCA for certain violations of international law. *Id.* at 239.

81. *Id.* at 253.

82. 28 U.S.C. § 1350 (2000); Torture Victim Protection Act of 1991, Pub. L. 102-256, 106 U.S. Stat. 73 (1992) [hereinafter the "TVPA"]. The TVPA gives aliens as well as U.S. citizens a cause of action in federal courts for claims of torture and extrajudicial killing. See TVPA. The TVPA was expressly designed by Congress "[t]o carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights by establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing." *Id.* at Preamble. President George H. Bush, in a statement regarding the passing of the TVPA, stated that "[t]he United States must continue its vigorous efforts to bring the practice of torture and other gross abuses of human rights to an end wherever they occur . . . [and that] we must maintain and strengthen our commitment to ensuring that human rights are respected everywhere." DAVID WEISBRODT, INTERNATIONAL HUMAN RIGHTS, LAW, POLICY, AND PROCESS 544 (3d ed. 2001) (quoting a March 12, 1992 statement on signing the Torture Victims Protection Act of 1991).

Even if universally condemned and definable, some offenses may still not be actionable against a private party under the ATCA unless the plaintiff can provide evidence⁸³ to satisfy the state action requirement.⁸⁴ Currently, only the following four violations of the law of nations are actionable against *private* parties under the ATCA without a showing of state action: 1) genocide,⁸⁵ 2) war crimes,⁸⁶ 3) forced labor/slavery,⁸⁷ and 4) crimes against humanity.⁸⁸ Other violations, such as torture, rape, summary execution, political persecution, causing disappearance, systematic racial discrimination, and prolonged arbitrary detention may also be actionable under the ATCA without a showing of state action, but only when such actions are perpetrated in the context of genocide, war crimes, forced labor/slavery, or perhaps crimes against humanity.⁸⁹

Therefore, in order for an ATCA plaintiff to sue for torture, for example, the plaintiff first needs to demonstrate that torture is a universally condemned violation that is easily de-

83. "If a plaintiff alleges a violation that is universally condemned and definable, and the allegation requires a showing of state action, the judge must then decide whether the plaintiff has presented sufficient evidence to satisfy this requirement." Rivera, *supra* note 54, at 272. To that end, the judge may refer to the jurisprudence of civil rights actions brought under 28 U.S.C. § 1983. See *Bigio v. Coca-Cola Co.*, 239 F.3d 440, 448 (2d Cir. 2000) (quoting *Kadic v. Karadzic*, 70 F.3d 232, 245 (2d Cir. 1995)) ("Color of law" jurisprudence of 42 U.S.C. § 1983 is a relevant guide to whether a defendant has engaged in official action for purposes of jurisdiction under the Alien Tort Act.').

84. See Rivera, *supra* note 54, at 272-73.

85. *Kadic*, 70 F.3d at 244. See also *Beanal v. Freeport-McMoRan, Inc.*, 969 F. Supp. 362, 371 (E.D. La. 1997).

86. *Kadic*, 70 F.3d at 244.

87. *Doe I*, 395 F.3d at 932.

88. *Kadic*, 70 F.3d at 236. See also *Wiwa v. Royal Dutch Petroleum Co.*, 226 F.3d 88, 92 (2d Cir. 2000), *cert. denied*, 532 U.S. 941 (2001).

89. The analysis in *Kadic* regarding the state action requirement for claims of crimes against humanity is unclear. See *Kadic*, 70 F.3d at 232. In *Wiwa v. Royal Dutch Petroleum Co.*, the Southern District of New York discussed when state action would be necessary for claims of crimes against humanity and found that *Kadic* did not foreclose the possibility that other violations, when committed within the context of crimes against humanity, may not require state action. 226 F.3d 88, 92 (2d Cir. 2000), *cert. denied*, 532 U.S. 941 (2001). Further, according to the Rome Statute of the International Criminal Court, certain violations could constitute crimes against humanity, thus possibly eliminating the state action requirement, "if committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." See Rome Statute of the International Criminal Court, art. 7, available at <http://www.un.org/law/icc/statute/romefra.htm> (last visited Aug. 22, 2005).

finable.⁹⁰ Furthermore, if the alleged torture occurred outside the context of genocide, war crimes, forced labor/slavery, or possibly crimes against humanity, the plaintiff would have to demonstrate that a state actor played an integral part in the alleged torture.⁹¹ Both these safeguards minimize concerns about frivolous lawsuits reaching trial.

Other persons, both natural and fictitious, may also be liable under the ATCA for their complicity in human rights violations committed in conjunction with state actors. In such cases, first, the plaintiff must satisfy the state action requirement by showing the necessary link between the state and the particular violation.⁹² Then, the plaintiff must show the necessary link between the private party and the state in connection with the alleged violation through some sort of third-party liability standard.⁹³ The third-party liability standard to be used in ATCA cases is still uncertain.⁹⁴ Nevertheless, U.S. courts can refer to the decisions of the international criminal tribunals of Rwanda and Yugoslavia⁹⁵ for guidance on this matter.⁹⁶ Under that standard, a third party can be liable for the acts of others when the third party know-

90. *Kadic*, 70 F.3d at 239.

91. *See id.* at 243-44.

92. *Id.* at 245.

93. *See Doe I*, 395 F.3d at 939-42. It is important to distinguish the analysis of the state action requirement from the analysis for establishing the legal culpability/responsibility of the private party being sued. The issues are similar, but third-party liability analysis is not the same as state action analysis. The tests described under section 1983 jurisprudence might be relevant to establish third-party liability in ATCA cases, but the liability of third parties is subject to a separate standard. *Beanal*, for example, addresses the state action analysis but not the third-party liability analysis. Thus, a plaintiff may be able to prove that a state actor played an integral part in the alleged violation, but that does not necessarily mean that the plaintiff has proven that a third party, in many cases a corporation, should be held liable for that act. *See also Sosa v. Alvarez-Machain*, 124 S. Ct. 2739, 2766 n.20 (2004).

94. *See Rivera, supra* note 54, at 273-76.

95. *See, e.g., Prosecutor v. Furundzija*, Case No. IT-95-17/1-PT, Order (Dec. 10, 1998); *Prosecutor v. Tadic*, Case No. IT-94-1-T, Opinion and Judgment ¶¶ 691-92 (May 7, 1997); *Prosecutor v. Delalic*, Case No. IT-96-21-T, Judgment ¶ 326 (Nov. 16, 1998).

96. *See Doe I*, 395 F.3d at 932. The District Court for the Southern District of New York has also tackled this issue. In *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, the court held that courts should examine international law standards of third-party liability to determine whether a corporation can conspire to commit, or aid and abet the commission of certain violations of the law of nations, such as genocide or war crimes. 244 F. Supp. 2d 289, 318-19, 326-27 (S.D.N.Y. 2003).

ingly provided practical encouragement or assistance that had a substantial effect on the perpetration of the offense.⁹⁷

In addition to the complexities discussed above, ATCA plaintiffs must comply with further procedural requirements, such as personal jurisdiction, and overcome other legal hurdles, such as immunities and *forum non conveniens* issues.⁹⁸ In light of *Sosa*, courts may even require the exhaustion of domestic remedies in foreign countries as a prerequisite to hearing an ATCA case.⁹⁹ All these safeguards are put in place to guarantee that frivolous ATCA lawsuits that do not meet the standard requirements will continue to be dismissed at the pre-trial stage.

B. ATCA Benefits and Incentives

When the door is open for the right type of ATCA plaintiff, the advantages and incentives are numerous.¹⁰⁰ For example, unlike many other domestic courts, U.S. courts allow high damage awards and punitive damages.¹⁰¹ Arguably,

97. See *Doe I*, 395 F.3d at 939-42.

98. See generally STEPHENS & RATNER, *supra* note 9.

99. *Sosa*, 124 S. Ct. at 2766 n.21. Hopefully, U.S. courts will understand that one reason why victims of human rights violations would seek justice in U.S. courts is that justice is not available in their own countries. Also, one of the main reasons why these lawsuits are brought in U.S. courts is because the perpetrators are found living in the United States, often escaping from their own domestic legal systems. The inter-American system also has a requirement that alleged victims exhaust available domestic remedies. See *supra* Section II.A. Nevertheless, the American Convention allows for exceptions to this requirement. U.S. courts should take note of such exceptions.

100. Rivera, *supra* note 54, at 257. See also Stephens, *supra* note 72, at 2 (arguing that "[g]iven the absence of effective international mechanisms, enforcement generally occurs within domestic legal systems"). See also Richard L. Herz, *Litigating Environmental Abuses under the Alien Tort Claims Act: A Practical Assessment*, 40 VA. J. INT'L L. 545, 549 (2000) (arguing that international fora are often inadequate, especially to redress human rights violations by transnational corporations).

101. Although some ATCA cases have resulted in rather large judgments, most of them have never been executed. The following is a brief survey of some of the high damages awarded by U.S. courts in ATCA cases: *Abebe-Jira v. Negewoh*, 72 F.3d 844, 846 (11th Cir. 1996) (\$1.5 million); *Estate of Cabello v. Fernández-Larios*, 402 F.3d 1148 (11th Cir. 2005) (\$4 million); *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987) (\$8 million) available at <http://www.earthrights.org/litigation/governmentcases.shtml#forti> (last visited Aug. 22, 2005); *Trajan v. Marcos*, 393 F.3d 987 (9th Cir. 2004) (\$760 million in compensatory damages and \$1.2 billion in punitive damages); *Doe v. Karadzic*, 866 F. Supp. 734 (2d Cir. 1995) (\$4.5 billion) available at <http://www.earthrights.org/litigation/governmentcases.shtml#karadzic> (last visited Aug. 22, 2005); *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995) (\$745 million)

such punitive damages serve as a deterrent for future human rights violators and at the same time send a message to current or previous abusers that they may be held accountable for their violations.¹⁰² In addition to the high monetary awards, plaintiffs in U.S. courts do not have to worry about paying for the high costs of litigation should they lose the case.¹⁰³ Further, the availability of contingent fee agreements between clients and lawyers provides yet another incentive for foreign plaintiffs to use U.S. courts to redress their harms. Also, the broad discovery tools available in U.S. courts,¹⁰⁴ are often not available in some foreign countries. Thus, foreign plaintiffs should consider the benefits of filing ATCA cases in U.S. federal courts.

IV. CONFRONTING LATIN-AMERICAN HUMAN RIGHTS ABUSERS IN A U.S. COURTROOM

Taking into account all of the complexities, requirements, and benefits of ATCA litigation in U.S. federal courts, an increasing number of inter-American human rights victims have sought justice using the ATCA. The following is a brief description of some of the ATCA cases¹⁰⁵ involving Latin America that have been brought thus far in U.S. federal courts.

available *at*
<http://www.earthrights.org/litigation/governmentcases.shtml#karadzic> (last visited Aug. 22, 2005); Paul v. Avril, 812 F. Supp. 207, 209 (S.D. Fla.1993) (\$41 million). Rivera, *supra* note 54, at 257. See also Stephens, *supra* note 72, at 2 (arguing that "[g]iven the absence of effective international mechanisms, enforcement generally occurs within domestic legal systems"). See also Herz, *supra* note 100, at 549 (arguing that international fora are often inadequate, especially to redress human rights violations by transnational corporations).

102. See Michael Ratner, *Civil Remedies for Gross Human Rights Violations*, *at* <http://www.humanrightsnow.org/Ratner2%20david%20ratner%20corrections%20final%20numbered.htm> (last visited Mar. 26, 2005) (commenting on the effect, use and benefits of civil remedies in U.S. courts for gross human rights violations).

103. Many of the principal non-profit organizations which bring ATCA cases on behalf of human rights victims, including the Center for Justice and Accountability and the Center for Constitutional Rights, neither charge their clients for their services nor accept contingency fees.

104. See FED. R. CIV. P. 26-37.

105. The facts relating to these cases were taken primarily from the Center for Justice and Accountability, *available at* www.cja.org (last visited Mar. 26, 2005).

A. *Chile: Estate of Cabello v. Fernández-Larios*

Following the September 11, 1973 coup led by General Pinochet, a military squad, known as the Caravan of Death, tortured, executed, and caused the disappearance of dozens of civilians believed to be a threat to the new regime.¹⁰⁶ Winston Cabello was a victim of the Caravan of Death; Armando Fernández-Larios participated in his torture and extrajudicial killing.¹⁰⁷ Mr. Cabello's family could not seek justice in Chilean courts against Fernández Larios because an amnesty law prevented his prosecution there. In 1999, the Cabello family learned that Fernández-Larios was living in Miami. According to Winston's sister, Zita Cabello-Barrueto, she "could only envision how frustrated and devastated [her family] would be [knowing] that this man who killed [their] brother and son was living with impunity in the United States."¹⁰⁸ She decided to pursue legal action against Fernández-Larios for Winston's death in the U.S. District Court for the Southern District of Florida on the basis of the ATCA.¹⁰⁹

On October 31, 2003, a jury found him liable for torture, crimes against humanity, and extra judicial killing and awarded the Cabello family four million dollars in compensatory and punitive damages.¹¹⁰ On March 14, 2005, the Eleventh Circuit upheld this verdict.¹¹¹ The following words of Zita Cabello-Barrueto provide insight into what these cases mean for the victims and societies they live in:

When I returned to Chile after the trial, I was overwhelmed by the response of the Chilean people to our vic-

106. Center for Justice & Accountability, *Chile: Armando Fernández-Larios*, available at <http://www.cja.org/cases/cabello.shtml> (last visited Apr. 27, 2005).

107. *Id.*

108. See Zita Cabello-Barrueto, Ph.D., *In Search of the Spring- The Journey for Justice in the Murder of My Brother Winston*, Speech Delivered at the 11th Rebellious Lawyering Conference, Yale Law School (Feb. 18-20, 2005), available at <http://www.tni.org/pin-watch/watch59.htm> (last visited Aug. 5, 2005).

109. See generally Center for Justice & Accountability, *Frequently Asked Questions: Cabello v. Fernández-Larios*, available at http://www.cja.org/cases/Cabello_Docs/CabelloFAQs.shtml (last visited Apr. 8, 2005).

110. Center for Justice & Accountability, Case No. 99-0528-CIV-LENARD, *Judgment in Cabello v. Fernández-Larios* (S.D. Fla. Oct. 31, 2003), available at http://www.cja.org/cases/Cabello_Docs/Judgement10%2031%2003.pdf (last visited Aug. 5, 2005).

111. *Cabello v. Fernández-Larios*, No. 04-10030, 2005 WL 580533 (11th Cir. Mar. 14, 2005).

tory, one in which they all shared. For so many families, of the murdered, the disappeared, and the tortured, our case was a ray of hope. Hopefully our efforts will prevent for others the immensity of the pain we couldn't prevent for ourselves. This was a lawsuit in the interest of justice and truth to show others that they can not live with impunity in the U.S. after the crimes they committed, nor should they be able to hide anywhere in the world.¹¹²

B. *El Salvador*

1. *Romagoza v. Casanova*

The Salvadoran military and security forces, with assistance from death squads, committed grave human rights abuses during the 1970s and 1980s in the name of fighting communism. Many of the higher-ranking military officers responsible for those human rights violations fled to Miami during the 1990s. General Carlos Eugenio Vides Casanova, who was the Director-General of the Salvadoran National Guard from 1979 to 1983 and later became Minister of Defense, and General Jose Guillermo Garcia, who was the Minister of Defense from 1979 to 1983, were among those who thought they could retire peacefully in Miami and avoid facing justice for their crimes. Nevertheless, the Center for Justice and Accountability found these two men living in the United States and in 1999 sued them under the ATCA in a U.S. District Court in Florida on behalf of three Salvadorans—a doctor, a university professor, and a church layworker—who had been abducted, detained, tortured and/or raped by the military in El Salvador during the late 1970s and early 1980s.¹¹³ The civil complaint alleged that Garcia and Vides Casanova exercised command responsibility over the Salvadoran Military and Security Forces when these groups committed torture, crimes against humanity, cruel, inhuman, and degrading treatment, and arbitrary detention.¹¹⁴ The doctrine of com-

112. See Cabello-Barrueto, *supra* note 108.

113. Center for Justice & Accountability, *El Salvador: Carlos Eugenio Vides Casanova and Jose Guillermo Garcia*, available at <http://www.cja.org/cases/romagoza.shtml> (last visited Apr. 8, 2005).

114. *Arce v. Garcia*, Case No. 99-8364-CIV-HURLEY, *Second Amended Complaint for Torture; Crimes Against Humanity; Cruel, Inhuman or Degrading Treatment or Punishment; and Arbitrary Detention*, ¶ 53 (Feb. 17, 2000), available at http://www.cja.org/cases/Romagoza_Docs/RomagozaComplaint.htm (last

mand responsibility allows military commanders and other superiors to be held responsible for abuses committed by subordinates under their effective control, if the commanders knew or should have known that the abuses were taking place and failed to take all reasonable measures to prevent the abuses or punish the perpetrators.¹¹⁵ On July 23, 2002, a jury returned a verdict of 54.6 million dollars against the two generals.¹¹⁶

For the Salvadorans who won the verdict, the case was more than a personal vindication of their rights. Bringing the case before a U.S. tribunal helped them tell a story they were not able to tell in El Salvador. As one of the victims stated, it "took [him] 15 years to be able to tell [his] story. [He] realized that telling [his] story to others is important, not only because it's important to know what happened in El Salvador, but also because in that way you are really out of prison."¹¹⁷

Unfortunately, on February 28, 2005, the Eleventh Circuit reversed the judgment against the Salvadoran generals.¹¹⁸ The court held that the plaintiffs did not file their suit within the ten-year applicable statute of limitations.¹¹⁹ On August 5, 2005, the Eleventh Circuit Court of Appeals vacated its decision to reverse the district court's judgment and stated it would issue a new decision, which is pending at the time of this publication.¹²⁰

Despite the Eleventh Circuit's decision, the victims found relief in that the jury decision at the district court level provided them with a sense of justice.¹²¹ As victims of torture,

visited Aug. 5, 2005).

115. *Ford v. Garcia*, 289 F.3d 1283, 1287-88 n.4 (11th Cir. 2002) (holding that jury instructions defining "command responsibility" were correct as to form and substance).

116. *Arce v. Garcia*, Case. No. 99-8364-CIV-HURLEY, *Verdict* (July 23, 2002), *available at* http://www.cja.org/cases/Romagoza_Docs/RomagozaVerdict.htm (last visited Aug. 5, 2005).

117. See Center for Justice & Accountability, *Survivors—El Salvador—Romagoza v. Garcia: Carlos Mauricio's Story* (internal quotations omitted), at <http://www.cja.org/forSurvivors/CarlosforSurvivors.shtml> (last visited Apr. 27, 2005).

118. *Arce v. Garcia*, 400 F.3d 1340, 1344 (11th Cir. 2005).

119. *Id.* at 1351.

120. See Decision Vacating April 20, 2005 Order, *available at* http://www.cja.org/cases/Romagoza_Docs/RomagozaVacateOpinion8.5.05.pdf (last visited Sept. 10, 2005).

121. See Luisa Yanez, *Federal Court: Torture Verdict Is Reversed*, THE MIAMI

the plaintiffs used their day in court to obtain an explanation from the generals as to why they did nothing to stop the tortures and extrajudicial killings.¹²² The victims may not be able to recover money damages from the general, but they were able to tell their story and let the world know about the atrocities committed by the Salvadoran military during the 1970s and 80s.

2. Doe v. Saravia (*Archbishop Romero case*)

Also during the 1970s, Archbishop Oscar Romero became a powerful voice against the human rights abuses committed by the Salvadoran military and the death squads. In 1980, the Archbishop was shot dead at a chapel in broad daylight, and because of a 1993 amnesty law, the El Salvador courts held no one responsible for the murder. An investigation by the Inter-American Commission on Human Rights concluded that Alvaro Rafael Saravia was involved in the assassination. Saravia had provided material support to the killers, including weapons, vehicles, and a driver, and had paid them after Archbishop Romero had been killed. In September 2003, CJA found Saravia living in Modesto, California, and filed a lawsuit against him on behalf of an unnamed relative of Archbishop Romero.¹²³ In November 2004, a federal judge awarded the plaintiff five million dollars in compensatory damages and five million dollars in punitive damages.¹²⁴

The decision has had an impact on Salvadorian society. Professor Patty Blum, CJA's Senior Legal Advisor, commented that this victory "has provided Salvadorans, both in El Salvador and here in the U.S., with a measure of justice denied to them in their own country, for the loss of their most beloved leader, who was truly the voice of the voiceless during one of El Salvador's darkest times."¹²⁵ Dr. Francisco Acosta, a trial witness who founded the Archbishop Romero University

HERALD, Mar. 2, 2005, available at http://www.cja.org/cases/Romagoza_News/MiamiHerald3.2.05.htm.

122. *Id.*

123. See Doe v. Saravia, 348 F. Supp. 2d 1112 (E.D. Cal. 2004).

124. *Id.* at 1159.

125. Center for Justice & Accountability, *Judge Finds Modesto Man Liable for 1980 Assassination of Archbishop Oscar Romero of El Salvador, Orders Him to Pay \$10 Million in Damages*, Share Foundation: Building a New El Salvador Today, available at http://www.share-elsalvador.org/news/press_release09-04.htm (last visited Apr. 27, 2005).

in El Salvador, stated:

I knew that the opportunity to tell the truth in a legal court of the most powerful country in the world will help to provide a sense of closure for all of Salvadoran society. . . . At the personal level, I feel a strong sense of healing and closure. For almost 25 years, I have carried a bag of heavy rocks with me everywhere I go. Today, I have left this bag of rocks with the U.S. system of justice.¹²⁶

Juan Carlos Cristales, Executive Director of El Rescate, a U.S. non-governmental organization that defends the rights of Central Americans, commented: "There are consequences for such acts—maybe not yet in El Salvador, but in the U.S. and elsewhere. I believe that the success of this case will give support to efforts in El Salvador to repeal the 1993 Amnesty law."¹²⁷

C. Honduras: Reyes v. Juan Evangelista López Grijalba

During the 1980s, the Honduran military and security forces, with the help of death squads, committed widespread human rights abuses. Impunity still reigns in Honduras for these crimes. Investigations are fruitless and witnesses in proceedings have been killed or threatened. Even witnesses that have gone to testify before the Inter-American Court of Human Rights in San José, Costa Rica, have been killed or threatened, prompting the Court to issue provisional measures on their behalf in order to protect their lives and personal integrity.¹²⁸

In the early 1980s, the former Honduran military intelligence chief Lieutenant Colonel Juan López Grijalba was in charge of the Honduran secret police force and the death squad known as Battalion 316, both notorious for their involvement in widespread human rights violations. In 1998, like many other Latin American human rights abusers, López Grijalba moved to Florida. He was arrested by immigration officials in 2002 and was ordered in 2004 to be deported back to Honduras because of his involvement in human rights violations there.¹²⁹ He is currently awaiting deportation in Mi-

126. *Id.*

127. *Id.*

128. See, e.g., Velásquez-Rodríguez Case, *Judgment*, ¶¶ 39-49, (July 29, 1988), *supra* note 12.

129. Center for Justice & Accountability, *Honduras: Juan Lopez Grijalba—*

ami.

The Center for Justice and Accountability is working with Honduran authorities to provide evidence for a criminal case against López Grijalba upon his return to Honduras. In 2002, CJA also filed a complaint in the U.S. District Court for the Southern District of Florida against López Grijalba on behalf of six former Honduran citizens.¹³⁰ The plaintiffs include: Oscar and Gloria Reyes, who were abducted by soldiers in 1982 and subjected to electric shock and beatings; Ricardo and Zenaida Velásquez, the son and sister of Manfredo Velásquez, who was abducted by Honduran soldiers in 1981 and has been missing since; and two other anonymous plaintiffs who are suing Grijalba on behalf of their disappeared brother.¹³¹ The case has been delayed, and will go to trial in the Southern District of Florida.

V. CONCLUSION

Plaintiff Zenaida Velásquez's search for inter-American justice for the disappearance of her brother Manfredo Velásquez serves as the perfect example of the availability of the two supra-national forums discussed in this article for Latin American human rights victims: the inter-American system of protection and promotion of human rights of the Organization of American States and the U.S. federal courts.¹³² Zenaida Velásquez and other members of her family unsuccessfully attempted to pursue legal remedies in Honduras, including filing petitions for *habeas corpus* and criminal complaints.¹³³ Zenaida and her family then filed a petition before the Inter-American Commission on Human Rights for the disappearance of her brother, and the Commission in turn brought the case before the Inter-American Court of Human Rights.¹³⁴

The Velásquez Rodríguez Case was decided in 1988 and

Background, available at <http://www.cja.org/cases/grijalba.shtml> (last visited Apr. 8, 2005).

130. See Velásquez v. Grijalba, *Complaint*, *supra* note 12.

131. *Id.* ¶¶ 16-22, 33-41.

132. Velásquez-Rodríguez Case, *Judgment* (July 29, 1988), *supra* note 12; Velásquez v. Grijalba, *Complaint*, *supra* note 12.

133. Velásquez v. Grijalba, *Complaint*, *supra* note 12, ¶ 41.

134. Case 7920 (Honduras), Inter-Am. C.H.R., Res. N° 22/86 (Apr. 18, 1986), *supra* note 12; Velásquez-Rodríguez Case, *Judgment* (July 29, 1988), *supra* note 12.

is probably the most widely known and studied case the Inter-American Court has ever decided.¹³⁵ It was the first contentious case decided by the Court, and its importance cannot be overstated. In that case, the Court found that the government of Honduras was responsible for Manfredo Velásquez's disappearance and ordered it to pay compensation to the family.¹³⁶

The Court's judgment provided Zenaida and her family with a form of reparation for the loss of her brother Manfredo.¹³⁷ But in light of Honduras' refusal to properly investigate and bring to justice the individual perpetrators of Manfredo's disappearance, Zenaida and her family decided to bring an individual civil lawsuit against López Grijalba in a U.S. federal court, using the ATCA.¹³⁸ By doing so, Zenaida and her family have proven that neither the State nor the individual perpetrators can evade inter-American justice.

Thus, both victims and perpetrators of human rights violations in the Americas should keep this in mind: the judges of the Inter-American Court of Human Rights can hold a State responsible for violations of the American Convention on Human Rights, and U.S. federal judges can hold the individual perpetrators liable for violations of the law of nations. The combination of these two forums provides victims of human rights violations in the Americas with alternatives in seeking inter-American justice.

135. See Velásquez-Rodríguez Case, *Judgment* (July 29, 1988), *supra* note 12.

136. See Velásquez-Rodríguez Case, *Judgment*, Part XIV (July 29, 1988), *supra* note 12.

137. Velásquez-Rodríguez Case, *Compensatory Damages Judgment*, Inter-Am. C.J.R., OEA/ser.C/7, ¶ 8 (July 21, 1989), available at http://www.corteidh.or.cr/seriecpdf_ing/seriec_07_ing.pdf (last visited Aug. 5, 2005).

138. Velásquez v. Grijalba, *Complaint*, *supra* note 12.
